

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9968 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements? yes.

2. To be referred to the Reporter or not?Yes.

3. Whether Their Lordships wish to see the fair copy  
of the judgement? No

No

No

No

No

No

No

No

No

No

No

No

No

No

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4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?No

5. Whether it is to be circulated to the Civil  
Judge?No

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LT COL VIJAYKUMAR GOEL (RETD)

Versus

STATE OF GUJARAT

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Appearance:

MR PS PATEL for Petitioner

MR DA BAMBHANIA for Respondents No. 1 & 2.

Caveators.

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 15/01/97

ORAL JUDGEMENT

The learned counsel for the petitioner submits that no relief has been claimed against Respondent No.3, the Respondent No.3 is deleted from the array of respondents.

Rule. Mr.Bambhanja waives service of the Rule. In the facts and circumstances of the case the matter is taken up for final hearing. The petitioner herein had joined the Army on 1-7-1965 and after successfully completion of 27 years job due to family circumstances he sought voluntary retirement from the Military service and at that time he was serving at Cuttack in Orissa. The certificate (Annexure 'A') was issued by the President of the Release Board certifying the petitioner to be fit for civil employment at the time of his discharge i.e. in May, 1993. The petitioner thereafter worked as Manager (Maintenance) in Charutar Arogya Mandal. The petitioner's name was sponsored for appointment to the post of District Sainik Welfare and Resettlement Officer by Ministry of Defence, Government of India, New Delhi. The petitioner was qualified for that post. He received interview call letter dated 18-11-1995 and was required to appear before the Selection Committee on 2-12-1995. This job was at Jamnagar which did not suit him and therefore the petitioner did not appear on 2-12-1995. Subsequently the respondents vide their letters dated 9-4-1996 and 11-4-1996 informed the petitioner to appear before the Selection Committee on 16-4-1996 at Gandhinagar for the purpose of interview for the post of District Sainik Welfare and Resettlement Officer at Jamnagar and Ahmedabad. The petitioner appeared before the Selection Committee and feeling assured of the employment as District Sainik Welfare and Resettlement Officer, Ahmedabad tendered his resignation from Charutar Arogya Mandal with effect from 30-4-1996. It is also the case of the petitioner that at the time of interview he had opted for appointment at Ahmedabad. The petitioner was selected by the Selection Committee and by order dated 4-6-1996 the petitioner was appointed by Respondent No.1 as District Sainik Welfare and Resettlement Officer, Ahmedabad on the terms and conditions mentioned in the resolution dated 4-6-1996 with regard to his appointment to the post of District Sainik Welfare and Resettlement

Officer, Ahmedabad. This appointment was subsequently notified by the Government of Gujarat, Home Department on 4-6-1996 itself. In pursuance of this notification dated 4-6-1996 the petitioner joined on 11-6-1996. While he was working as District Sainik Welfare and Resettlement Officer at Ahmedabad a notification was issued on 4-12-1996 whereby his services were terminated on the ground that the President, Standing Medical Board, Civil Hospital, Ahmedabad vide its certificate dated 7-8-1996 had found the petitioner to be medically unfit. Aggrieved from this notification dated 4-12-1996 the petitioner preferred this Special Civil Application on 4-12-1996 itself. When the matter came up before the Court on 17-12-1996 the learned Addl. Government Pleader Mr. D. A. Bambhania entered into Caveat on behalf of the Respondents No. 1 and 2 and sought time to produce report of the Medical Board. On 20-12-1996 the time was again sought for production of the report of the Medical Board and the matter was adjourned. When the matter came up before this Court again on 27-12-1996 the Medical Examination Report for employment in the public services was placed on record by Mr. Bambhania. As per this medical certificate of examination for employment in the public services dated 7-8-1996 the Medical Board opined that it could not discover that the petitioner has any disease, constitutional weakness or bodily infirmity except past history CABG surgery. On the basis of this past history of CABG, the Medical Board further opined that it was a disqualification for employment in the office of the Director, Sainik Welfare and Resettlement, Ahmedabad. It was argued on behalf of the petitioner that according to the memorandum of Government of India, Ministry of Home Affairs, New Delhi dated 21-2-1981 with regard to Rehabilitation of Disabled Defence Services personnel and concessions for appointment to Group C & D posts which was also applicable to Group 'A' post under Rule 5(i) providing medical standards. The petitioner had been examined in accordance with rules of the Army at the time of his discharge and was placed in category B-2, according to which he can be given posting at any place upto the height of 9000 ft. It was further submitted by the petitioner that he had been selected for appointment as District Sainik Welfare and Resettlement Officer, Ahmedabad and in view of Rule 5(i) and the contents of the report of the Medical Board as pointed out above, it was agreed by both the sides that let the petitioner be examined by the Medical Board of the Military Hospital at Ahmedabad. Accordingly, it was ordered that the petitioner may approach the Officer, Commanding of the Military Hospital at Ahmedabad and the medical examination may be conducted before 15-1-1987 and the

report may be sent in a sealed cover to the Registrar of this Court. The matter was then posted for 15-1-1997. Accordingly, the matter came up today and the report as has been sent in the sealed cover by the Registrar for Commanding Officer has been perused. The opinion of the Board is as under :

" Board is of the opinion that retired officer is fit for sedentary duties in Civil with following restriction on employability.

(a) Not fit for duties involving marching/walking beyond 5 kms.

(b) Fit for duties in plane areas only.

(c) Fit for duties in areas where specialist facilities are available within 15 km of place of work."

It has been submitted by the learned counsel for the petitioner that the post of District Sainik Welfare Officer, Ahmedabad is a post in the Directorate of Sainik Welfare of Resettlement, Gujarat State and it does not require the petitioner to undertake marching/walking beyond 5 kms and he has to process the cases in the office. Mr. Bambhania has invited my attention to the letter dated 31-8-1996 sent to the President of the Medical Board by the Director of Sainik Welfare and Resettlement. It contains the duties and responsibilities of the District Sainik Welfare and Resettlement Officer as under :

(a) Settlement of financial problems such as pension and other retirement/release benefits/dues to ex-servicemen and grants and assistance in kind to ex-servicemen beneficiaries and dependents from the Central/State Govts. or other organisations such as the Indian Red Cross Society etc.

(b) Maintaining close liaison with the Pension Disbursing authorities/agencies in the District to ensure prompt and correct payment of pension and reliefs to ex-servicemen pensioners or their dependents.

(c). Providing assistance for settlement of land and other disputes.

(d) Assist families of serving personnel in regard to their welfare during their absence away on duty.

(e) Promote and maintain under the guidance of the State Rajya Sainik Boards, welfare measures in the District such as Rest House for ex-servicemen, old age pensioners' homes vocational and other training facilities etc.

(f). Mobilise assistance for medical treatment in Military/Civil hospitals.

(g) Maintain liaison with other welfare organisations such as the Indian Red Cross Society, etc. with a view to enlarge the field of additional sources of welfare and concessions for ex-servicemen and their families/dependents in the Districts.

(h) Maintain an up-to-date register of war widows, dependents and those disabled in action with a view to ensure their welfare.

(j) To maintain close and effective liaison for purpose of resettlement through employment of ex-servicemen with :-

(i) Local Central/State/Private industrial Organisation.

(ii) Local employment exchange particularly in States where it has co-sponsoring powers for re-employment of ex-servicemen.

(iii) Local revenue authorities in connection with schemes for resettlement on land of ex-servicemen.

(iv) Distt. Industries/Block Development Offices and assisting such of these ex-servicemen desirous of setting up small industries.

(k) Assist ex-servicemen in forming and setting up co-operative for their self-employment.

(l) Provide all resettlement assistance to war widows, dependent and war disabled as well as to those who died/disabled while in service<sup>3</sup> due to attributable reasons.

(m) Organise Flag Day and Flag Day collections and any other authorised fund raising measures in the district.

(n) Organise rallies/re-union of ex-servicemen.

(o) Explore avenues for providing educational and vocational training facilities for ex-Servicemen and their dependents to enable them to seek and obtain employment or set up self-employment.

(p) Assist the three services whenever called upon to do so to disseminate information within the district regarding terms and conditions of service in the Armed Forces, provide publicity for requirement notice and for assistance rendered by the Armed Forces in times of national calamities, notification of awards of gallantry and other decorations, introduction of welfare schemes of service personnel and their families."

The duties which are enumerated in this letter under para 2(a) to 2(p) do not render the petitioner to be unfit as per the opinion given by the Board of the Army Hospital as the petitioner has been found to be fit for sedentary duties in civil and he is not required to march/walk beyond 5 kms., he has to discharge duties in plane areas only and he has been found to be fit for duties in the areas where specialist facilities are available within 15 kms. of place of work. In this view of the matter, in the light of the opinion of the Medical Board of the Army Hospital and keeping in view the enumerated duties under para 2(a) to 2(p) in the letter dated 31-8-1996 it cannot be said that the petitioner is not fit to discharge the duties of District Sainik Welfare and Resettlement Officer at Ahmedabad, the post for which he had been selected and appointed and the post on which he had already worked for a period of nearly six months prior to the date of the passing of the impugned notification dated 4-12-1996. The opinion of the Medical Board of the Army Hospital was sought in terms of the order dated 27-12-1996 passed by this Court on agreement of both the sides and now that the petitioner is found to be fit for discharging the duties enumerated in the letter dated 31-8-1996 available at page 27 (Annexure 'L'), there is no reason to deprive the petitioner of the appointment for which he had been selected and against which he had worked for a period of six months. The opinion of the Medical Board of the Army Hospital as received from the Registrar for Commanding Officer vide covering letter dated 15-1-1997 shall remain a part of the record of this petition. The Registrar for Commanding Officer has sent the opinion of the Medical Board in duplicate, therefore, one set may be kept in the record and one set may be given to the respondents so as

to form a part of the service record of the petitioner in the Directorate of Sainik Welfare Board.

Accordingly this Special Civil Application is allowed. The impugned order dated 4-12-1996 cannot be sustained in the eye of law and the same is quashed and set aside. The petitioner stands relegated to the post of District Sainik Welfare and Resettlement Officer as was held by him prior to the passing of the order dated 4-12-1996 with all consequential benefits as if the order dated 4-12-1996 had never been passed against him. The opinion rendered by the Medical Board of the Army Hospital shall meet the condition of the medical examination as was contemplated at the time of his appointment. Rule is made absolute accordingly. No order as to costs.

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